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Supreme Court, U.S.
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No.

In the

Supreme Court of the United States

Joe John Rodriguez

Petitioner

vs.

Wayne W. Farrell, and Lois Szczepanski

On Petition for Writ of Certiorari
To the United States Court of Appeals for
the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

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59 pp

Questions Presented For Review

Is Eleventh Circuit precedent which holds that continued painful handcuffing, of a non-threatening and compliant suspect is not excessive force (even where other alternatives are readily available) simply because Eleventh Circuit precedent holds that the infliction of pain, even if substantial, is not excessive force unless it can be expected to render a serious injury?

Does an officer act in an "objectively reasonable" manner entitling him to qualified immunity as a matter of law, where he handcuffs a compliant and non-threatening suspect behind his back using a "pain compliance" technique where the officer is also aware the suspect was recently released from the hospital due to a serious accident, confirms such hospitalization by briefly reviewing the hospital records and prescriptions carried by the suspect, is warned to "be careful" about the suspect's arm, has departmental regulations that allow handcuffing in the front or not at all to an injured suspect, and upon handcuffing observes the suspect fall down to his knees screaming in obvious pain that his arm is being injured – combined with the fact that the result of such handcuffing is injury to a key healing bone fragment that results in twenty five operations and the eventual amputation of the arm?

Is the continued handcuffing of a non-resistive and compliant suspect behind his back "objectively reasonable", entitling the officer to qualified immunity, where it is obvious that the handcuffing

is causing uncommon and severe pain to the suspect, the officer is on notice that the suspect was recently released from the hospital involving a serious injury, and other methods of securing the suspect are readily available?

Is the decision of the Eleventh Circuit Court of Appeals in the current case in conflict with the decisions of other Circuit Courts of Appeal in Walton v. City of Southfield, 995 F.2d 1331 (6th Cir 1993); Grooms v. Dockter, 76 F.3d 378 (6th Cir. 1996); Martin v. Heideman, 106 F.3d 1308 (6th Cir. 1997); Kostrzewa v. City of Troy, 247 F.3d 633 (6th Cir. 2001); Guite v. Wright, 147 F.3d 747 (8th Cir. 1998); Johnson v. Morel, 876 F.2d 477 (5th Cir. 1989); Heitschmidt v. City of Houston, 161 F.3d 834 (5th Cir. 1998); Williams v. Bramer, 186 F.3d 633 (5th Cir. 1999); Palmer v. Sanderson, 9 F.3d 1433 (9th Cir. 1993); Hansen v. Black, 885 F.2d 642 (9th Cir. 1989); LaLonde v. County of Riverside, 204 F.3d 947 (9th Cir. 2000); Goff v. Bise, 173 F.3d 1068 (8th Cir. 1999); and Bastien v. Goddard, 279 F.3d 10 (1st Cir. 2002), as well as the decision in Graham v. Connor, 490 U.S. 386 (1989)?

Listing of Parties

The parties before the Circuit Court of Appeals for the Eleventh Circuit were Wayne W. Farrell, and Lois Szczepanski (Appellants below), and the Petitioner in this Court, Joe John Rodriguez (Appellee below). This petition concerns only the actions of the Respondent, Wayne W. Farrell, on the excessive force issue.

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Statement Regarding Jurisdiction

The case as originally filed included state court claims for false arrest, and federal claims pursuant to 42 U.S.C. 1983 for violations of the constitutional rights of Mr. Rodriguez under the Fourth Amendment for arrest without probable cause, and the use of excessive force. The Complaint was filed in the Orange County, Florida, Circuit Court, and was removed by the Defendants/Respondents pursuant to 28 U.S.C. 1441 to the United States District Court for the Middle District of Florida, District Court Docket Number 98-00997-CV-ORL-19A

The Defendants, Farrell and Szczepanski, who were the police officers involved in the arrest and detention of the Petitioner, Mr. Rodriguez, moved for summary judgment before the District Court on the basis of qualified immunity, which motion was denied by the District Court Judge on June 7, 2000. An interlocutory appeal was thereafter timely taken by Mr. Farrell and Ms. Szczepanski to the United States Court of Appeals for the Eleventh Circuit, Docket Number 00-13147.

On January 30, 2002, the Eleventh Circuit, in an opinion authored by the Hon. J.L. Edmondson, overturned the District Court's order, finding that both police officers were entitled to qualified immunity on the probable cause issue, and further found that Mr. Farrell was entitled to qualified immunity on the excessive force issue.[1] Judgment was entered by the Eleventh Circuit accordingly on that same day, January 30, 2002.

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[1] Ms. Szczepanski was not involved in the excessive force issue.

A timely petition for rehearing was thereupon filed by Mr. Rodriguez, and was denied with opinion on June 17, 2002. The opinions of the United States Circuit Court of Appeals are found at: Rodriguez v. Farrell, 280 F.3d 1341 (11th Cir. 2002); reh. denied with opinion, 294 F.3d 1276 (11th Cir. 2002)

Jurisdiction of the United States Supreme Court is invoked pursuant to 28 U.S.C. 1254(1).

Statement of the Relevant Facts

On September 8 1995, at the time of 12:10 a.m., a vehicle in which the Petitioner, Joe John Rodriguez, was riding in as a passenger was stopped by a police officer for having an unlit tag light. The only other occupant was its female driver. The officer was accompanied by an un-uniformed male, and also had her canine in the back of her unit. She called for a backup, and another officer, Sgt. Farrell arrived to assist.

While sitting in the front passenger seat Mr. Rodriguez had his left arm in a sling resting on a pillow. He was asked to exit the vehicle by the first officer, and took off the sling before exiting. Sgt. Farrell was standing behind the vehicle during this period in his backup capacity. After Mr. Rodriguez exited the vehicle the first officer conducted a voluntary search of the driver, and found drugs in her purse. The driver was arrested without incident, and placed in the back of Sgt. Farrell's unit.

Critical to the issues before this Court, Mr. Rodriguez had been recently released from the hospital after a serious motorcycle accident for life-threatening injuries. His left elbow had been shattered, had undergone extensive surgery, and was kept in place by bone plates and surgical screws. Other than the sling, the injury would not have been obvious to sight as Mr. Rodriguez was wearing a long sleeved shirt that hid the surgical scars, and extensive bandaging.

After the arrest and placement of the female driver in the back of his unit, Sgt. Farrell asked Mr. Rodriguez for identification, and at that time

was told by the Petitioner that he had recently been released from the hospital due to a motorcycle accident, and was still taking medication because of it. Sgt. Farrell located the medications in marked prescription bottles, and lined them up on the trunk of the vehicle. He then briefly looked through some of the hospital records from the accident which the Petitioner had with him. During the entire time, Mr. Rodriguez was cooperative, and non-resistant.

Sgt. Farrell decided to do a "warrants check" on Mr. Rodriguez, and called dispatch. Although a female dispatcher announced "Rodriguez, no wants or warrants" based on a check of his driver's license, another dispatcher later came back with an "alias" hit for a "Victor Manuel Heredia" who used an alias of Joe Rodriguez. Mr. Heredia had an six year old outstanding warrant for possession of cocaine, and two traffic matters. The warrants carried a combined bond of five thousand five hundred dollars. Although Mr. Rodriguez had extensive, if not extraordinary identifications proving who he was, and although there were significant discrepancies in the physical identifications of the wanted person, Sgt. Farrell decided to arrest Mr. Rodriguez as "Victor Heredia", and did so prior to any attempt to confirm the warrant. No effort was made to warn the Petitioner he was about to be arrested, and the first he knew of it was when Sgt. Farrell grabbed his left arm, and began twisting it behind his back. The arrest occurred at 12:40 a.m., thirty minutes after the initial stop of the vehicle.

In making the arrest, Sgt. Farrell grabbed the Petitioner's left arm, and twisted it as high as he could on the Petitioner's back to just below the shoulder blade in a "pain compliance maneuver". According to Sgt. Farrell's deposition, Mr. Rodriguez had asked him to "be careful" of his arm immediately prior to the handcuffing. At the point when the arm was twisted behind him, Mr. Rodriguez fell to his knees screaming in pain that Sgt. Farrell was "hurting" his arm. Rather than stop, or ask Mr. Rodriguez what the problem was, Sgt. Farrell completed the handcuffing process, and placed Mr. Rodriguez in his police vehicle, handcuffed behind his back. While in the back of the unit the Plaintiff continued to complain about severe pain, while grunting and moaning constantly. The Petitioner was then transported to the police station, and placed in a holding cell where the handcuffs were removed. The time that Mr. Rodriguez was cuffed was approximately fifteen minutes.

The deposition of the Petitioner's surgeon established that the handcuffing displaced a key bone fragment that led to an infection, twenty five operations, and the eventual amputation of Mr. Rodriguez's left arm. The surgeon also testified that handcuffing the Petitioner behind his back would have been "a very serious, painful event". It is significant to note that the regulations of Sgt. Farrell's police department permitted an officer to handcuff an injured suspect in the front, or not at all.[2]

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[2] Appendix, infra.

The Petitioner sued Sgt. Farrell[3] in the United States District Court for the Middle District of Florida for the use of excessive force pursuant to 42 U.S.C. 1983, under the Fourth Amendment. Sgt. Farrell sought summary judgment on the excessive force issue on the basis of "qualified immunity".

The District Court denied qualified immunity in a written order, finding the material facts to be in controversy, and Sgt. Farrell took an interlocutory appeal to the Eleventh Circuit Court of Appeals, which reversed the District Court, finding that qualified immunity on the excessive force issue should have been granted.

Mr. Rodriguez had argued both before the District Court, and Eleventh Circuit that the excessive force issue was in two primary parts. The first was whether Sgt. Farrell acted in an objectively reasonable manner, in the first instance, by handcuffing the Petitioner behind his back, and using a pain compliance maneuver, as he was "on notice" that the Petitioner was recovering from serious injuries. The second issue was whether Sgt. Farrell acted in an objectively reasonable manner in continuing the handcuffing when it should have been obvious that it was causing the Petitioner extreme and unusual pain, especially as other less-painful restraint alternatives were available. In analyzing this issue the Petitioner pointed out that he continued to be cooperative

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[3] The suit in the District Court also involved claims under the Fourth Amendment against both officers for arrest without probable cause, and a state law claim against the municipality for common law false arrest.

throughout his ordeal, and there were at least two other persons available to assist Sgt. Farrell, plus a police dog. It is also significant that Petitioner's expert had testified in deposition that the conduct of Sgt. Farrell was not objectively reasonable.

Argument in Support of Petition

A line of cases from other Circuit Court's of Appeal existing prior to the decision in this case had held that handcuffing, under certain circumstances, could sustain a constitutional injury for excessive force. Hansen v. Black, 885 F.2d 642 (9th Cir. 1989)("rough handcuffing"); Palmer v. Sanderson, 9 F.3d 1433 (9th Cir. 1993)(tight cuffing with refusal to loosen); LaLonde v. County of Riverside, 204 F.3d 947 (9th Cir. 2000)(tight handcuffs which cut-off circulation); Walton v. City of Southfield, 995 F.2d 1331 (6th Cir 1993)(obvious pain with plea not to handcuff behind back as shoulder was injured); Martin v. Heideman, 106 F.3d 1308 (6th Cir. 1997)(refusal to loosen tight cuffs where complained hands were numb); Kostrzewa v. City of Troy, 247 F.3d 633 (6th Cir. 2001)(refusal to loosen cuffs that were too tight and injuring wrists); Grooms v. Dockter, 1996 U.S. App. LEXIS 3444, 76 F.3d 378 (6th Cir. 1996)(tight handcuffing with refusal to loosen causing suspect to cry in visible and continued pain); Johnson v. Morel, 876 F.2d 477 (5th Cir. 1989)(tight handcuffing that broke skin and left scars); Heitschmidt v. City of Houston, 161 F.3d 834 (5th Cir. 1998)(tight handcuffing causing severe pain

left on for hours without loosening); Williams v. Bramer, 186 F.3d 633 (5th Cir. 1999)(handcuff behind back after being warned by doctor and suspect of possible severe injury if did so); Goff v. Bise, 173 F.3d 1068 (8th Cir. 1999)(painful handcuffing combined with other injuries); Guite v. Wright, 147 F.3d 747 (8th Cir. 1998)(non-handcuff case where police were told suspect recovering from surgery to shoulder, and grabbed, pushed, and held against door such to reinjure it) Bastien v. Goddard, 279 F.3d 10 (1st Cir. 2002)(painful handcuffing with refusal to loosen). See also, Fundiller v. City of Cooper City, 777 F.2d 1436 (11th Cir. 1985) (handcuffing behind back of severely injured suspect not a reasonable method of restraint and excessive force).

The Petitioner believes these cases form a "consensus" from which an officer would be placed on "fair warning" that painful handcuffing continued on a non-resistive suspect who complains of injury or severe pain is not constitutionally acceptable where alternatives are readily available,[4] and especially where the handcuffing aggravates a pre-existing injury disclosed to the officer. See, Hope v. Peltzer, __U.S. ___, 122 S. Ct. 2508, 2515-2516, 153 L. Ed. 2d 666 (2002)("fair warning" is all that is necessary).

In the instant case,, the Eleventh Circuit did not agree with this concept, and held that the

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4. Alternatives according to the expert included using two pairs of cuffs joined together; cuff in the front; cuff each hand to belt; or no cuffs at all. See also, Winter Park Police Dept. Procedure, 106-12. Appendix, infra.

handcuffing technique used by Sgt. Farrell "is a relatively common and ordinarily accepted non-excessive way to detain an arrestee", and it was only because his "earlier surgery made what otherwise would be a common non-excessive handcuffing technique a maneuver that caused severe injury and tragic results." Rodriguez, at 230 F.3d , 1351. In so stating, the Eleventh Circuit held that "painful handcuffing, without more, is not excessive force in cases where the resulting injuries are minimal", and further noted that: "In the Eleventh Circuit, we recognize that the typical arrest involves some force and injury." Rodriguez, supra at 1351 (emphasis added). The Eleventh then concluded, contrary to the findings of the District Court, and the deposition of Plaintiff's police procedures expert, that Sgt. Farrell was not on notice that his actions in handcuffing Mr. Rodriguez behind his back could cause any injury other than temporary pain.

On rehearing the Eleventh Circuit addressed an allegation that it had overlooked the argument that the "continued handcuffing" of Mr. Rodriguez, behind his back, was objectively unreasonable due to clear indications of substantial pain, and the Petitioner's protestations that his arm was being injured. In dismissing that argument, the Eleventh Circuit stated that Sgt. Farrell was under no obligation to give credence to Mr. Rodriguez statements of pain or injury, and that similar false claims were frequently made, and were: "no doubt, uttered by many suspects who, if given the choice, would prefer not to be handcuffed at all and, if they must be restrained in that manner, would prefer that the handcuffs be in front."

Rodriguez, at 294 F.3d, 1278. The court, in footnote 3, then went on to state that had Mr. Rodriguez told Sgt. Farrell his arm was injured prior to the arrest, the court would have been "more inclined" to conclude that the Constitution required Sgt. Farrell to credit it.

Your Petitioner respectfully believes that the Eleventh Circuit used an incorrect an unacceptable standard in reversing the denial of summary judgment by the District Court on this issue, and that standard conflicts with the cases previously cited in this petition from other Circuits. The standard used by the Eleventh Circuit is that painful handcuffing, even where continued after an arrest, is an acceptable procedure, even if it is unnecessary, and easily corrected – even if done to a non-resistant and non-dangerous subject, so long as the officer could have believed that no serious injury would result in the typical case.

A further extension of the holding, as amplified in the rehearing, is that unless an officer is informed prior to an arrest that a suspect has a serious pre-existing injury, and is also informed of the exact location of the injury – the officer need not give credence to any later claims of injury by the suspect, and may constitutionally ignore such claims even where manifestations of severe pain are apparent.

In essence, the approach of the Eleventh Circuit gives an officer a right to act in a torturous, and deliberately ignorant manner if the technique used would not ordinarily result in a serious injury, despite any contra-indications he observed or became aware of. More importantly, the officer's decision to take steps to alleviate the

pain need not be based on any objective reason, or legitimate police concern, but can be based on mere indifference, as pain alone, however intense, is not constitutionally protected in the Eleventh Circuit under the Fourth Amendment.

Thus, the fact that the Petitioner fell to his knees in this case, screaming in pain that his arm was being injured, could constitutionally be overlooked even though the officer had briefly looked at the Petitioner's hospital records and prescriptions – simply because Mr. Rodriguez failed to inform the officer of the exact nature of his injury prior to the arrest, even though he was unaware he was going to be arrested.

It appears the precedent of the Eleventh Circuit is also in conflict with the precedent of this Court in Graham v. Connor, 490 U.S. 386, 396 (1989), where a detainee who claimed to be diabetic and suffering from low blood sugar was tightly handcuffed, and thrown headfirst into the side of a police car - thus suffering injuries both to his wrists, head and shoulders. This Court held that in determining objective reasonableness the test that was to be applied included consideration of the severity of the crime at issue, whether the suspect posed an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.

The Petitioner respectfully submits that the decision of the Eleventh Circuit conflicts with the Graham case, supra, as the continued application of painful handcuffing to a non-threatening and compliant suspect – especially a suspect

recovering from surgery – would not appear to meet the threshold for the application of force required by Graham.

It is therefore, respectfully requested that certiorari be granted.

Respectfully submitted,

Jon H. Gutmacher, Esq.
Counsel for Petitioner

-- APPENDIX --
IN SUPPORT OF PETITION
FOR WRIT OF CERTIORARI

JOE JOHN RODRIGUEZ, Plaintiff-Appellee, versus WAYNE W.FARRELL, LOIS SZCZEPANSKI, Defendants-Appellants.
No. 00-13147

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

280 F.3d 1341 (11th Cir. 2002); 2002 U.S. App. LEXIS 1423; 15 Fla. L. WeeklyFed. C 280

January 30, 2002, Decided
January 30, 2002, Filed

COUNSEL: For Wayne W. Farrell, Appellant: Jeffrey Arthur Rynor, Mitrani, Rynor & Gallegos, P.A., Miami, FL.

For Lois Szczepanski, Appellant: Jeffrey Arthur Rynor, Mitrani, Rynor & Gallegos, P.A., Miami, FL. Loren H. Cohen, Mitrani, Rynor, et al., Miami, FL.

For Joe John Rodriguez, Appellee: Jon H. Gutmacher, Attorney at Law, Orlando, FL.

JUDGES: Before EDMONDSON and RONEY, Circuit Judges, and JORDAN *, District Judge.

* Honorable Adalberto J. Jordan, U.S. District Judge for the Southern District of Florida, sitting by designation.

OPINION BY: EDMONDSON

OPINION: [*1343]

EDMONDSON, Circuit Judge:

This appeal is about an arrest, the Fourth Amendment, and mistaken identity. Joe John Rodriguez sued Sergeant Wayne Farrell ("Sgt. Farrell") and Officer Lorri Szczepanski ("Officer Szczepanski"), under *42 U.S.C. § 1983*, alleging that the police officers violated the Constitution when they mistakenly arrested him pursuant to a valid arrest warrant for another person. Sgt. Farrell and Officer Szczepanski, in their personal capacities, appeal the district court's denial of qualified immunity. We reverse.

FACTS n1

Footnotes- - - - - - - - - - - - - - - - - - -

n1 Because this appeal is from the denial of summary judgment, we must view the evidence in the light most favorable to the plaintiff. *Hudson v. Hall, 231 F.3d 1289, 1292 n.2 (11th Cir. 2000)*. "But, we stress that the 'facts' set out in this opinion--the 'facts' that we must assume for the purposes of this appeal--may turn out not to be the actual facts of this case."

Id.

-End Footnotes- - - - - - - - - - - - - - - - - - -

On 8 September 1995 at 12:10 a.m., Officer Szczepanski pulled over a vehicle driven by Patricia Foulkes ("Ms. Foulkes"): the vehicle had a broken tag light. Rodriguez was the only passenger in Ms. Foulkes's car. Shortly after the initial traffic stop, Sgt. Farrell arrived to provide backup.

Officer Szczepanski told Ms. Foulkes to get out of the car and then asked for her driver's license. After Ms. Foulkes said that her driver's license was in her purse which was in her car, Officer Szczepanski returned to the car and asked Rodriguez, who was seated in the car with his arm in a sling and resting on a pillow, n2 to hand her Ms. Foulkes's purse. After Rodriguez handed her Ms. Foulkes's purse, Officer Szczepanski directed Rodriguez to get out of the vehicle. Rodriguez complied and walked around freely beside the vehicle. But, before Rodriguez got out of the vehicle, he removed his sling. Because Rodriguez was wearing a long-sleeve shirt (after he had removed his sling), nothing outwardly indicated that Rodriguez's arm was injured.

Footnotes- - - - - - - - - - - - - - - - - - -

n2 Rodriguez had severely injured his arm in a motorcycle accident.

End Footnotes- - - - - - - - - - - - - - - - - - -
[**3]

Officer Szczepanski returned to Ms. Foulkes, found unlawful drugs (methamphetamine, as well as others) in her purse, and arrested her. Officer Szczepanski thereafter began to search Ms. Foulkes's car. Then, Sgt. Farrell -- who, to this point, had only been observing the situation from a position behind Ms. Foulkes's car n3 -- approached Rodriguez.

Footnotes- - - - - - - - - - - - - - - - - - -

n3 Rodriguez testified at his deposition that Sgt. Farrell was behind the car and that he could see the Sergeant in one of the car mirrors. Rodriguez also testified that the interior of the car was "dark."

End Footnotes- - - - - - - - - - - - - - - - - - -

Sgt. Farrell asked Rodriguez for identification. Rodriguez directed Sgt. Farrell's attention to a duffle bag, which contained more than ten pieces of identification, including Rodriguez's Florida driver's license, birth certificate, military discharge papers, social security card, credit card, and V.A. patient data card. n4 Sgt. Farrell, [*1344] after obtaining consent from Rodriguez, searched the duffle bag and removed the driver's license from the organizer that contained[**4] Rodriguez' identifications. During the search, Sgt. Farrell

noticed several prescription-drug bottles and questioned Rodriguez about their purpose. Rodriguez told the Sergeant that he had just gotten out of the hospital after a motorcycle wreck. Sgt. Farrell also briefly looked at a collection of hospital records n5 that were in the duffle bag.

Footnotes- - - - - - - - - - - - - - - - - - - -

n4 Rodriguez had this extraordinary collection of identifications with him to apply for benefits.

n5 Rodriguez testified at his deposition that he did not know the extent of these records. But, he believed that they were fewer than 100 pages, covered the motorcycle accident, and were for the purpose of applying for disability benefits.

End Footnotes- - - - - - - - - - - - - - - - - -

Sgt. Farrell called dispatch over his radio and ran a check on Rodriguez's driver's license information. The dispatcher responded, "no wants or warrants." Sgt. Farrell continued to talk with the dispatcher when a "name hit" was obtained on Rodriguez's name. Teletype communications to the dispatcher indicated that three warrants existed[**5] for a Victor Heredia who used the alias "Joe Rodriguez. " n6 Heredia was wanted by the St. Johns County, Florida Sheriff's Department for several charges, including possession of cocaine. n7 The

dispatcher relayed descriptive information from the warrant to Sgt. Farrell.
Footnotes- - - - - - - - - - - - - - - - - - -

n6 The warrant for Heredia was almost six years old.

n7 The other two charges were for unlawful use of a driver's license and driving with a license that was suspended or revoked.

End Footnotes- - - - - - - - - - - - - - - - - -

The following chart lists relevant descriptive information from the warrant that was available and the corresponding information for Rodriguez:

name	Victor Manuel Heredia aka Joe Rodriguez	Joe John Rodriguez
Sex	male	male
Race	white	white
Date/Birth	6/24/53 7/2/53 6/23/53 (multiple)	3/23/53
Place/Birth	New York	New York
SSN	112-42-9808 112-42-5808 112-43-9809	115-42-5388

Tattoos	4 tattoos; right forearm, left arm, right arm, back	6 tattoos; both biceps, both shoulder blades; both ankles (none right forearm)
Height	5'6"	5'11"
Weight	139 lbs.	180 lbs.
Hair color	brown	brown
eye color	green	brown
scar	Scar: forehead	no scar
Residence	St. Augustine, Florida	Apopka, Florida

After Sgt. Farrell received identifying information from the dispatcher, Sgt. Farrell [*1345] approached Rodriguez and questioned him about two of his physical characteristics: height and tattoos. Sgt. Farrell first asked Rodriguez his height. Rodriguez responded by claiming he was 5'11". Sgt. Farrell disagreed, stating: "No way, I'm 5'11", you're shorter than me." Rodriguez claims that Sgt. Farrell was standing on a curb when Farrell made this statement. Sgt. Farrell then focused on Rodriguez' tattoos. Convinced by the fact that Rodriguez had at least four tattoos (he had six) and that the locations of the first two identified by Rodriguez were in the locations listed in the warrant, Sgt. Farrell arrested Rodriguez on the Heredia warrant.

When Sgt. Farrell arrested Rodriguez, Sgt. Farrell grabbed Rodriguez' left arm, twisted it behind Rodriguez' back, and forced it up to just below the shoulder-blade. Rodriguez fell to the ground screaming in pain, telling Sgt. Farrell that he was hurting his arm. n8 Sgt. Farrell ignored Rodriguez' screams, completed the cuffing, and took Rodriguez to the station. After arriving at the station roughly 10 minutes later, Rodriguez was placed in a holding[**7] cell and his cuffs were removed.

Footnotes- - - - - - - - - - - - - - - - - - -

n8 Rodriguez testified at his deposition that he, before the arrest began, did not tell Sgt. Farrell that his arm was injured.

End Footnotes- - - - - - - - - - - - - - - -

DISCUSSION

"Qualified immunity protects government officials performing discretionary functions ... from liability if their conduct violates no 'clearly established statutory or constitutional rights of which a reasonable person would have known.' " *Lassiter v. Alabama A&M Univ., Bd. of Trustees, 28 F.3d 1146, 1149 (11th Cir. 1994)* (en banc).

"Unless a government agent's act is so obviously wrong, in the light of pre-existing law, that only a plainly incompetent officer or one who was knowingly violating the law would have done such a thing, the government actor has immunity from suit." Id. Whether a defendant official has violated a constitutional

right at all is, of course, "a 'necessary concomitant' to the question of qualified immunity: if a defendant has not violated the law at all, he certainly has not violated clearly established[**8] law." *Hudson v. Hall, 231 F.3d 1289, 1294 (11th Cir. 2000)* (quoting *GJR Investments, Inc. v. County of Escambia, 132 F.3d 1359, 1366-67 (11th Cir. 1998)).*

A. The Arrest

1. Constitutional Violation

"A warrantless arrest without probable cause violates the Fourth Amendment and forms a basis for a section 1983 claim." *Ortega v. Christian, 85 F.3d 1521, 1525 (11th Cir. 1996).* We conclude that no violation occurred in this case. In reaching this conclusion, the Supreme Court's opinion in *Hill v. California, 401 U.S. 797, 28 L. Ed. 2d 484, 91 S. Ct. 1106 (1971),* and various cases from the Seventh Circuit (as well as other circuits) guide our determination.

In *Hill v. California, 401 U.S. 797, 28 L. Ed. 2d 484, 91 S. Ct. 1106 (1971),* the Supreme Court determined, in a criminal case, whether the mistaken arrest of one person (for whom no probable cause to arrest existed) based upon the misidentification of that person as a second person (for whom probable cause to arrest existed) violated the Constitution. The Court concluded "no," writing that "when the police have probable cause to arrest one party, [**9] and when they reasonably mistake a second

party for the first party, then the [*1346]arrest of the second party is a valid arrest." *401 U.S. at 802* (alteration in original).

The same "reasonable mistake" standard applies (1) in the context of a section 1983 action and (2) when the police have a valid warrant -- as opposed to just probable cause -- to arrest someone, but mistakenly arrest someone else due to a misidentification. E.g., *White v. Olig, 56 F.3d 817, 820 (7th Cir. 1995)* (using Hill "reasonable mistake" standard in section 1983 case and determining that mistaken arrest pursuant to valid warrant was reasonable); cf. *Rodriguez v. Jones, 473 F.2d 599, 605-06 (5th Cir. 1973)* (concluding plaintiff could not recover, under section 1983, against officers who forcibly entered plaintiff's residence pursuant to mistaken belief that two fugitives named in arrest warrants were in residence because officers' mistaken belief was reasonable under the circumstances). See generally U.S. Const. amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall[**10] not be violated.") (emphasis added). We must, therefore, determine as a legal matter whether Sgt. Farrell and Officer Szczepanski's mistaken arrest of Rodriguez -- pursuant to the execution, in the field, of a valid arrest warrant for Heredia -- was outside the scope of "reasonable mistakes."

The Eleventh Circuit has no precedents for what constitutes an unreasonable seizure due

to a mistaken identification and arrest under a valid warrant in the field. The Seventh Circuit, however, has addressed this problem in several opinions: their discussions guide us today. n9 In *Johnson v. Miller, 680 F.2d 39, 42 (7th Cir. 1982)*, the court concluded, as a matter of law, that a police officer's misidentification arrest of a white woman pursuant to an arrest warrant for a black woman did not violate the Constitution. In *Patton v. Przybylski, 822 F.2d 697, 698-99 (7th Cir. 1987)*, the court concluded that a police officer's misidentification arrest of the plaintiff -- a black man with the same name as a black man listed in an arrest warrant -- was, as a matter of law, a reasonable mistake that did not violate the Constitution, although plaintiff's driver's license[**11] was from a different state, listed an address different from the one in the arrest warrant, and listed plaintiff's date of birth as different from the one in the arrest warrant. In *Brown v. Patterson, 823 F.2d 167, 169 (7th Cir. 1987)*, the court concluded that a police officer's misidentification arrest of the plaintiff -- a black man with the same name as the alias n10 of a black man listed in an arrest warrant -- was, as a matter of law, a reasonable mistake that did not violate the Constitution, although the plaintiff's driver's license listed an address different (in a different city) from the one in the arrest warrant and listed plaintiff's date of birth as different (by 12 days) from the one in the arrest warrant.

Footnotes- - - - - - - - - - - - - - - - - - -

n9 The Seventh Circuit's views on the

subject are consistent with other circuits. See *Brady v. Dill, 187 F.3d 104, 114 (1st Cir.1999)* (citing, among others, Seventh Circuit opinion concluding that mistakenly arresting person of different race not unreasonable and stating that "courts have concluded with some regularity that relatively minor discrepancies in physical features or other data do not render unreasonable an arrest pursuant to a facially valid warrant"). [**12]

n10 The alias was a very common name with 15 identical listings in the local phone book.

End Footnotes-- - - - - - - - - - - - - - - -

According to a district court in the Seventh Circuit, these three cases stand for this proposition: "In the Seventh Circuit's view, a police officer acts reasonably if he arrests a person after determining that the person's name matches the name [*1347] listed on an outstanding arrest warrant." *Bruce v. Perkins, 701 F. Supp. 163, 164 (N.D. Ill. 1988).* We, however, need not adopt this broad rule to decide today's case. To the contrary, as the Seventh Circuit itself has recognized, we must evaluate the totality of the circumstances surrounding the arrest to determine its reasonableness. See *Patton, 822 F.2d at 699-700* (examining totality of the circumstances); see also *United States v. Glover, 233 U.S. App. D.C. 161, 725 F.2d 120, 122 (D.C. Cir. 1984)* ("The reasonableness of the arresting officers' conduct must be determined by considering the totality of the circumstances

surrounding the arrest."); cf. *United States v. Gonzalez, 969 F.2d 999, 1006 (11th Cir. 1992)[**13] (concluding that: "A policeman's mistaken belief of fact can properly contribute to a probable cause determination and can count just as much as a correct belief as long as the mistaken belief was reasonable in the light of all the circumstances.").*

Rodriguez' identifying information was identical to the information listed in Heredia's warrant in four critical aspects: same name, same sex, same age, n11 and same race. Significant other information was similar: (1) they had similar Social Security numbers; n12 (2) they had addresses in neighboring towns; n13 and, (3) they were born in the same state. Rodriguez (4) also had no fewer tattoos than Heredia, and many of the tattoos were in the same locations. Against all of these similarities is one material n14 difference: Rodriguez says he is 5'11" tall, and the warrant listed Heredia as 5'6". n15 A reasonable [*1348] mistake cannot, however, be transformed into an unreasonable mistake over such a small difference, given all the circumstances.

Footnotes- - - - - - - - - - - - - - - - - - - -

n11 According to the warrant, Heredia used multiple birth dates. Heredia's various birthdays all occurred in 1953, the same year Rodriguez was born.

n12 According to the warrant, Heredia used multiple Social Security numbers. Heredia's

various Social Security numbers were all similar to each other and similar to Rodriguez' .

n13 See *Brown, 823 F.2d at 169* (relying on following when determining that arrest was reasonable: "If like many criminals [the person listed in the warrant] has an alias--and there is no suggestion that he does not, in fact, use the alias of "Anthony Brown"--it would not be surprising if he also has a false address and birthdate. ... Harvey, where [the plaintiff] was arrested, surrounds Phoenix, where he lives, and is near Chicago, where [the person listed in the warrant] lives (or lived when the warrant was issued--he presumably decamped shortly afterward, or he would have been arrested).").

n14 We do not consider the other differences of much importance. Eye color (given contact lens), scars (given cosmetic surgery), and weight are all easily variable, especially over six years. This variability lessens the importance of differences in these characteristics. See *Brady, 187 F.3d at 112* (discussing false arrest cases in context of false imprisonment case and stating that "we live in an age where altering physical features may be accomplished with facility"); *Blackwell v. Barton, 34 F.3d 298, 304 (5th Cir. 1994)* (stating, in context of mistaken arrest case, "discrepancies in hair and eye color or skin tone are not determinative in this day when use of hair dyes, cosmetic contact lenses, and tanning salons is relatively common"). Not every change in a fugitive's appearance can properly prevent arrest by police officers.

n15 Arresting police officers need not act as judges determining ultimate facts. Trials of guilt or innocence cannot be undertaken by police officers on the side of the road in the middle of the night before an officer can effect a lawful arrest pursuant to a valid warrant. In this case, the arresting officer said, on the spot, he did not believe plaintiff was as tall as plaintiff claimed to be. The officer was not obligated to accept plaintiff's statements as true. See *Marx v. Gumbinner, 905 F.2d 1503, 1507 n.6 (11th Cir. 1990).* Moreover, even if the arresting officer was fully aware that plaintiff was some inches taller than the 5'6" set out in the warrant, not every discrepancy (as we have already said) in height and so forth would demand that the policeman refrain from executing the warrant. See *Thompson v. Prince William County, 753 F.2d 363, 365 (4th Cir. 1985).* Other strong indicators in the warrant matched plaintiff. There are limits on how much independent investigating an officer must make before executing an arrest warrant, even when the arrested person is asserting a claim of mistaken identity. See *Baker v. McCollan, 443 U.S. 137, 99 S. Ct. 2689, 2695, 61 L. Ed. 2d 433 (1979).* The question is not whether the police could have done more; but whether they did just enough. Furthermore, the circumstances that justify a lawful arrest also justify a brief detention incident to the arrest. See *Gerstein v. Pugh, 420 U.S. 103, 95 S. Ct. 854, 863, 43 L. Ed. 2d 54 (1975).* Plaintiff was released within minutes of having been fingerprinted at the jail when it was realized that plaintiff was not the

person who was the true subject of the arrest warrant.

End Footnotes- - - - - - - - - - - - - - - -

In other words, in the context of this case, a mistaken estimate of no more than five inches does not equal a constitutional violation. After all, Sgt. Farrell and Officer Szczepanski were in the field, not in a police station. Cf. *Cannon v. Macon County, 1 F.3d 1558 (11th Cir. 1993)* (reinstating jury verdict against official who worked at police station after concluding that official's failure, when under no time pressure over seven-day period at police station, to investigate discrepancies between descriptive information contained in arrest warrant and description of person arrested pursuant to that warrant amounted to constitutional violation), modified, *15 F.3d 1022 11th Cir. 1994)*. They -- after midnight, on a dark street, immediately after finding unlawful drugs in a container in the vehicle in which Rodriguez was one of only two occupants -- were trying to determine whether Rodriguez was the person described in the warrant, a warrant charging the listed person with drug possession. See *Patton, 822 F.2d at 699-700* (relying on fact that arrestee "was in an automobile rather than at home; if [the officer] had let him go it[**17] might have taken a long time to catch up with him again (if he was the 'real' [person listed in the warrant])" and "the edginess all policemen feel in confronting a criminal suspect at night on a highway" when concluding that no finder of fact

could conclude that officer acted unreasonably in arresting wrong person for arrest warrant despite discrepancies).

Time was short in the situation facing Sgt. Farrell and Officer Szczepanski: a nighttime traffic stop. The officers had minutes to make their determination, not months or even days: Rodriguez soon had to be either arrested or let go. Cf. *Tillman v. Coley, 886 F.2d 317, 321 (11th Cir. 1989)* (concluding that sheriff's failure to investigate discrepancies in identity of person against whom he sought arrest warrant -- discrepancies of which he was aware three months before seeking the warrant -- could constitute constitutional violation sufficient to form foundation of section 1983 constitutional false arrest claim); *Cannon, 1 F.3d at 1558* (seven day detention period). Given all the circumstances, the Constitution's guarantee against "unreasonable" seizures was not violated by an estimate[**18] of height that was accurate within 5 inches. n16

Footnotes- - - - - - - - - - - - - - - - - - -

n16 We can find only one circuit court opinion -- Rodriguez cites none -- actually holding an officer potentially liable for the mistaken arrest of someone pursuant to a valid arrest warrant for another. See *Watts v. County of Sacramento, 256 F.3d 886 (9th Cir. 2001).* But, Watts is very different from our case. Most important, Watts involved the entry into and an arrest in a home and, even more worrisome, a

home that was not known to be the dwelling place of the person listed in the warrant.

Under the circumstances of this case, defining "reasonable mistake" to exclude the acts of Sgt. Farrell and Officer Szczepanski -- thereby creating a cause of action against them and subjecting them personally to possible monetary liability -- would likely deter future officers too much from making arrests in public places on valid warrants about which they do not have first-hand knowledge: the risk of error in identification, and then a lawsuit, would simply be too great. As a result, persons sought for crimes would, therefore, find it easier to evade capture. See *Johnson, 680 F.2d at 41* ("If an officer executing an arrest warrant must do so at peril of damage liability under section 1983 if there is any discrepancy between the description in the warrant and the appearance of the person to be arrested, many a criminal will slip away while the officer anxiously compares the description in the warrant with the appearance of the person named in it and radios back any discrepancies to his headquarters for instructions.").

End Footnotes- - - - - - - - - - - - - - - -

[*1349]

Put differently, we -- given the facts as Rodriguez presents them -- conclude, as a matter of law, that Sgt. Farrell and Officer Szczepanski made a "reasonable mistake" when they arrested Rodriguez pursuant to Heredia's warrant and, thus, committed no constitutional

violation upon which to base a section 1983 constitutional false-arrest claim. n17

Footnotes- - - - - - - - - - - - - - - - - - -

n17 Sgt. Farrell and Officer Szczepanski have not argued in this appeal that the pertinent arrest was consistent with the Federal Constitution because probable cause (even if no warrant had been involved) existed for the arrest, given that plaintiff was one of only two occupants of an automobile in which the police had just found unlawful drugs in a container that was also in the automobile. So, we do not address that issue. But for background, see *United States v. Buckner, 179 F.3d 834 (9th Cir. 1999); Fernandez v. Perez, 937 F.2d 368 (7th Cir. 1991).*

We, however, do treat the fact that plaintiff was riding in an automobile in which unlawful drugs had been found in a container to which plaintiff had access and had handled as a significant part of the totality of the circumstances of plaintiff's arrest. Plaintiff was not just walking down the street and stopped because passing police officers thought he might fit some outstanding warrant. He was in a car that was carrying drugs, and he (to say the least) was of the same name, sex, race, and age as a person for whom a warrant for a drug crime was outstanding. It is the arrest in these circumstances that is before us. The warrant did not have to justify this arrest in a vacuum; something, at least, approaching (if not reaching)

probable cause to arrest was established by plaintiff's having been in the car where drugs were being carried. So, the warrant - - with its substantial similarities between plaintiff and the person for whom the warrant was issued -- need not (and should not) be viewed alone: abstract and pure.

End Footnotes- - - - - - - - - - - - - - - -

2. Clearly Established Law

In the alternative, we conclude that, given the law at the time of arrest, the unlawfulness of the arrest was not already clearly established. "A government-officer defendant is entitled to qualified immunity unless, at the time of the incident, the 'preexisting law dictates, that is, truly compels,' the conclusion for all reasonable, similarly situated public officials that what Defendant was doing violated Plaintiffs' federal rights in the circumstances." *Marsh v. Butler County, 268 F.3d 1014, 1030-31 (11th Cir. 2001)* (en banc) (quoting *Lassiter, 28 F.3d at 1150).* Furthermore, because Fourth Amendment qualified-immunity determinations turn on the reasonableness of an officer's acts in a certain set of facts, the Supreme Court recently stressed that the determination of whether a legal right was already clearly established "must be undertaken in light of the specific context of the case, not as a broad general proposition." *Saucier v. Katz, 150 L. Ed. 2d 272, 533 U.S. 194, 121 S. Ct. 2151, 2156 (2001).*

Assuming, arguendo, that Sgt. Farrell and Officer Szczepanski's mistaken arrest of Rodriguez was[**21] unreasonable in the constitutional sense and that Rodriguez, thus, has stated a claim for unconstitutional arrest, the constitutional violation -- at the time of the arrest -- was not already clearly established: Rodriguez cited to no case (nor can we find one) in this Circuit or from the United States Supreme Court [*1350] or Florida Supreme Court that has ever held an officer, under any set of circumstances, liable for misidentifying an arrestee when executing a valid arrest warrant.

The cases that are factually closest to the instant case (and that conclude that an officer is, or may be, liable under section 1983) are *Cannon v. Macon County, 1 F.3d 1558 (11th Cir. 1993),* and *Tillman v. Coley, 886 F.2d 317 (11th Cir. 1989).* Both of these cases are, however, materially different from this case.

Cannon and Tillman share a fundamental distinction from our case: neither case involves an on-the-spot decision to arrest by an officer in the field. Cannon concluded that an official at a police station was liable for failing to identify correctly the plaintiff during seven days of incarceration under the official's care. *Cannon, 1 F.3d at 1562-63.[**22] Cannon did not conclude that the officer, who executed the warrant (the validity of which was not challenged) in the field, was liable. 1 F.3d at 1561.* Tillman deals with the application for an arrest warrant that the court concluded was insufficient because the affidavit

submitted to the magistrate lacked probable cause; Tillman decides nothing about the execution of a valid arrest warrant in the field. *Tillman, 886 F.2d at 320-21.* Thus, Cannon and Tillman are not like this case: they do not address situations involving an officer's execution of a valid arrest warrant in the field. Given the circumstances of the case at hand, the precedents cannot have clearly established the applicable law for the purposes of the qualified immunity defense. See generally *Marsh, 268 F.3d at 1031-34* (explaining use of precedents to determine clearly established law).

Public officers need not err on the side of caution. *268 F.3d at 1030 n.8.* And, "public officials are not obligated to be creative or imaginative in drawing analogies from previously decided cases." *Adams v. St. Lucie County Sheriff's Dep't, 962 F.2d 1563, 1575 (11th Cir. 1992)[**23] (Edmondson, J., dissenting), approved en banc, 998 F.2d 923 (11th Cir. 1993).* At the time of the pertinent arrest, no precedent had decided that an officer committed a constitutional violation by mistakenly executing a valid arrest warrant against the wrong person. Closer to the point, no precedent had decided that the nighttime arrest, in conjunction with a traffic stop, of a person -- who had been riding in an automobile in which unlawful drugs were being carried, and who was admittedly within five inches of the height of a fugitive for which a valid warrant for arrest (for offenses including a drug offense) was in existence and known to the arresting officers -- violated the Federal

Constitution when the arrested person shared with the fugitive (1) similar birth dates, social security numbers, addresses, birth places and tattoos as well as (2) the identical name, sex, race and age. n18 Therefore, we conclude that, if Sgt. Farrell's and Officer Szczepanski's mistake in arresting Rodriguez was not, as a matter of law, a "reasonable" one, it was, at least, an arguably reasonable one in the light of the unsettled, preexisting law. See *Marsh, 268 F.3d at 1030 n.8, 1031 n.9.[**24] We must, therefore, reverse the district court's denial [*1351] of qualified immunity to Sgt. Farrell and Officer Szczepanski.*

Footnotes- - - - - - - - - - - - - - - - - - -

n18 We very occasionally encounter the exceptional case in which a defendant officer's acts are so egregious that preexisting, fact-specific precedent was not necessary to give clear warning to every reasonable (by which we, in the qualified immunity context, always mean every objectively reasonable) officer that what the defendant officer was doing must be "unreasonable" within the meaning of the Fourth Amendment. See *Priester v. City of Riviera Beach, 208 F.3d 919 (**11th Cir.** 2000).* See generally *Marsh, 268 F.3d at 1031 n.9* (discussing means by which officers can be fairly and clearly warned). But the case now before us is not one like that.

End Footnotes- - - - - - - - - - - - - - - - -

B. Excessive Force During the Arrest

We conclude that the force used by Sgt. Farrell during his arrest of Rodriguez did not violate the Constitution. The use of excessive force in carrying out an arrest constitutes[**25] a violation of the Fourth Amendment. *Graham v. Connor, 490 U.S. 386, 394, 104 L. Ed. 2d 443, 109 S. Ct. 1865 (1989).* But, "the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." 490 U.S. at 396. In the Eleventh Circuit, we recognize that the typical arrest involves some force and injury. See *Nolin v. Isbell, 207 F.3d 1253, 1257-58 (11th Cir. 2000).*

The evidence, in the light most favorable to plaintiff, shows that Sgt. Farrell grabbed plaintiff's arm, twisted it around plaintiff's back, jerking it up high to the shoulder and then handcuffed plaintiff as plaintiff fell to his knees screaming that Farrell was hurting him. Plaintiff was placed in the rear of Sgt. Farrell's patrol car, kept handcuffed behind his back and transported to the police station. The were removed minutes after arrival at the police department. The handcuffing technique used by Sgt. Farrell is a relatively common and ordinarily accepted non-excessive way to detain an arrestee.

Plaintiff's orthopedic surgeon testified that the handcuffing was a "very [**26]serious, painful event," that resulted in the loosening of the internal surgical hardware, and caused the displacement of a key bone fragment. The

resulting complications included more than twenty-five subsequent surgeries and ultimately amputation of the arm below the elbow. n19

Footnotes- - - - - - - - - - - - - - - - - - -

n19 Given the loss of an arm, we are presented with the proverbial "hard case," that is, one in which one's natural sympathies are aroused by the plaintiff's plight. We recall Justice Jackson's warning to judges: "We agree that this is a hard case, but we cannot agree that it should be allowed to make bad law." *FCC v. WOKO, Inc., 329 U.S. 223, 229, 67 S. Ct. 213, 216, 91 L. Ed. 204 (1946).*

End Footnotes- - - - - - - - - - - - - - - - - -

Painful handcuffing, without more, is not excessive force in cases where the resulting injuries are minimal. See *Nolin, 207 F.3d at 1257-58* (concluding, as a matter of law, that force used during arrest, including handcuffing, was not excessive when force and resulting injury were minimal); *Brissett v. Paul, 141 F.3d 1157 (4th Cir. 1998)[**27] (table) (concluding, as matter of law, that painful handcuffing with minimal injury not constitutional violation); Foster v. Metropolitan Airports Comm'n, 914 F.2d 1076, 1082 (8th Cir. 1990)*(same); see also *Martin v. Gentile, 849 F.2d 863, 869-70 (4th Cir. 1988)* (concluding that force used, as a matter of law, was not excessive); *Silverman v. Ballantine, 694 F.2d 1091, 1096-97 (7th Cir. 1982)* (same).

This case is different from Nolin because Rodriguez' earlier surgery made what otherwise would be a common non-excessive handcuffing technique (that ordinarily would be painful but cause minimal injury) a maneuver that caused severe injury and tragic results. This distinction, however, is not important legally and does not preclude a conclusion that Rodriguez has shown no constitutional violation: no evidence has been presented that Sgt. Farrell knew of plaintiff's recent elbow surgery or, more important, knew that handcuffing plaintiff would seriously aggravate plaintiff's preexisting condition. n20 We do [*1353] not use hindsight to judge the acts of police officers; we look at what they knew (or reasonably should have known) at the time[**28] of the act. What would ordinarily be considered reasonable force does not become excessive force when the force aggravates (however severely) a pre-existing condition the extent of which was unknown to the officer at the time. See *Silverman, 694 F.2d at 1096-97* (concluding that force used was not, as a matter of law, excessive even though arrestee died of heart attack during arrest). Under the circumstances of this case, Sgt. Farrell's acts cannot rise to the level of a constitutional violation. n21

Footnotes- - - - - - - - - - - - - - - - - - -

n20 Rodriguez admits that he did not tell Sgt. Farrell that he had an injured arm before his arrest, and nothing outwardly indicated that Rodriguez' arm was injured after

Rodriguez was outside the car. But, Rodriguez asks us to infer from the evidence he presented that Sgt. Farrell knew or should have known that Rodriguez' arm was already injured and required special treatment during the arrest. Rodriguez specifically argues that the evidence shows that, before Sgt. Farrell arrested him: (1) Rodriguez told Sgt. Farrell that he had just gotten out of the hospital because he (Rodriguez) had been in a motorcycle accident; (2) Sgt. Farrell briefly looked through Rodriguez' hospital records; and, (3) Sgt. Farrell was standing behind Ms. Foulkes' car when Rodriguez was in the car and still had his arm in a sling. From these three circumstances, Rodriguez says that one can reasonably infer that Sgt. Farrell knew about Rodriguez' injured arm and that the arm demanded special treatment. We disagree.

Sgt. Farrell testified flatly that he did not see Rodriguez' arm in a sling. And, the circumstances to which Rodriguez points are not inconsistent with Sgt. Farrell's sworn testimony. Rodriguez admits that the interior of Ms. Foulkes' car -- the area into which Sgt. Farrell, from his position behind the car, would have needed to have seen Rodriguez in his sling -- was "dark." Never does Rodriguez tell us how far behind the pertinent car Sgt. Farrell was standing. Never does Rodriguez say that he saw Farrell focus on him while Rodriguez was in the car wearing a sling.

Given the evidence in this record,

Rodriguez relies on conjecture that the sling could have, and would have, been observed by a reasonable officer. See *Daniels v. Twin Oaks Nursing Home, 692 F.2d 1321, 1324 (11th Cir. 1982)* ("An inference is not reasonable if it is 'only a guess or a possibility,' for such an inference is not based on the evidence but is pure conjecture and speculation."). **Rodriguez** cannot overcome contradictory direct evidence -- Sgt. Farrell's sworn testimony that he did not see the sling -- and raise a genuine issue of fact. We decline to accept Rodriguez' contended-for double inference (that the sling was observable and that Sgt. Farrell made, or a reasonable officer would have made, that observation in the context of what was occurring generally in the nighttime traffic stop and arrest of Ms. Foulkes) to prove that Sgt. Farrell saw, or should have seen, Rodriguez' arm in the sling. See generally *Clover v. Total Sys. Servs., Inc., 176 F.3d 1346, 1355 (11th Cir. 1999)* (concluding that inference that one person told a second person about a specific fact regarding a topic, based upon evidence that the first and second persons met and talked and evidence that the second person knew about the topic generally, was unreasonable speculation in the light of an affirmative denial of knowledge of the specific fact by the second person); *Burrell v. Board of Trs. of Georgia Military Coll., 970 F.2d 785, 791 n.15 (11th Cir. 1992)* ("Considering that Burrell cannot offer evidence of the contents of Baugh's and Baggarly's meeting, that Baugh and Baggarly provide a reasonable and consistent explanation for their meeting, that Baugh and

Baggarly flatly deny having discussed Burrell, only one fact can be inferred from their meeting: that the meeting took place. Any conclusion about the content of their discussion in contradiction to their testimony would qualify as speculation, not inference."); *Daniels, 692 F.2d at 1326* (concluding jury could not reasonably draw inference that nursing home's negligent act of allowing patient to wander away from home was proximate cause of patient's death because inference was only supported by mere scintilla of evidence and conflicted with uncontradicted facts). See also *Pennsylvania R.R. v. Chamberlin, 288 U.S. 333, 340-41, 53 S. Ct. 391, 77 L. Ed. 819 (1933)* ("And the desired inference is precluded for the further reason that respondent's right of recovery depends upon the existence of a particular fact which must be inferred from proven facts, and this is not permissible in the face of the positive and otherwise uncontradicted testimony of unimpeached witnesses consistent with the facts actually proved, from which testimony it affirmatively appears that the fact sought to be inferred did not exist."). Thus, the evidence is insufficient to support a finding that Sgt. Farrell knew, or should have known, about Rodriguez' injured arm (and that the arm demanded special treatment) because Rodriguez had the arm in a sling at a time before his arrest.

Nor does Rodriguez' testimony that Sgt. Farrell briefly "looked" at Rodriguez' hospital records raise an inference that Sgt. Farrell knew, or should have known, about Rodriguez'

injured arm and that the arm demanded special treatment. Rodriguez specifically testified that Sgt. Farrell "looked" at the records; he admits that Farrell did not "read" them. Rodriguez also provides no evidence tending to show specifically what the content of these hospital records would have been. Under the circumstances, this evidence, even combined with evidence that Rodriguez told Sgt. Farrell that he had just gotten out of the hospital after a motorcycle accident, is not enough to support an inference that Sgt. Farrell knew, or should have known, specifically that Rodriguez' arm was injured and that the arm demanded special care. Cf. *Clover, 176 F.3d at 1355.*
*[**29]*

n21 In the alternative, we conclude that Sgt. Farrell is entitled to qualified immunity on the excessive force claim.

End Footnotes- - - - - - - - - - - - - - - - - -

REVERSED and REMANDED for further proceedings consistent with this opinion.

JOE JOHN RODRIGUEZ, Plaintiff-Appellee, versus WAYNE W.FARRELL, LOIS SZCZEPANSKI, Defendants-Appellants.
No. 00-13147

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

294 F.3d 1276; 2002 U.S. App. LEXIS 11860; 15 Fla. L. WeeklyFed. C 677

June 17, 2002, Decided
June 17, 2002, Filed

JUDGES: Before EDMONDSON, Chief Judge, RONEY, Circuit Judge, and JORDAN * , District Judge.

* Honorable Adalberto J. Jordan, U.S. District Judge for the Southern District of Florida, sitting by designation.

OPINIONBY: EDMONDSON

OPINION: [*1277] PETITION FOR REHEARING AND SUGGESTION OF REHEARING EN BANC

EDMONDSON, Chief Judge:

On interlocutory appeal from the district court's denial of qualified immunity to two police officers at the summary judgment stage, we reversed. Plaintiff, Joe John Rodriguez, has since filed a petition for rehearing and a

suggestion for rehearing en banc. Although these filings do not cause us to change our conclusion, they do point to two portions of the record that deserve comment.

On the question of unreasonable seizure, Rodriguez points us to our discussion of his "brief detention" at the end of footnote 15 of our original opinion. He stresses that his transportation to the jail from which he was released (and his transportation back from that jail after he was released) took several -- roughly 18 total -- hours. The evidence shows that, [**2] shortly after his arrest at around one o'clock in the morning, Sgt. Farrell took Plaintiff to the local police station. Plaintiff stayed at the station for roughly two hours before he was transported by other officers, via one county jail were he stayed for some hours, to the jail of the county from which the outstanding warrant came. This final jail was "hours" away from the places of confinement to which Plaintiff was initially taken. After his release, Plaintiff was transported from the final jail and, at his request, was dropped off near his home between 7:00 and 8:00 pm that same day. No delay for delay's sake has been alleged or is supported by the evidence.

Assuming that the entire time of confinement was caused by Sgt. Farrell and Officer Szczepanski, n1 Plaintiff's journey to the jail in the county that issued the arrest warrant (even including his return from that jail), despite its extended nature, was still a "brief detention:" a

reasonable detention incident to Plaintiff's lawful arrest. See generally *County of Riverside v. McLaughlin, 500 U.S. 44, 111 S. Ct. 1661, 1670, 114 L. Ed. 2d 49 (1991)* (stating that delays of less than 48 hours for judicial determinations[**3] of probable cause are presumptively reasonable, unless detainee can prove that determination was delayed unreasonably, and noting that "courts cannot ignore the often unavoidable delays in transporting arrested persons from one facility to another" when determining reasonableness).

Footnotes- - - - - - - - - - - - - - - - - - -

n1 This assumption is likely wrong. For background, see *Lindsey v. Storey, 936 F.2d 554, 563 (11th Cir. 1991)* (affirming grant of summary judgment to defendant officer on plaintiff's wrongful continued detention claim where officer had arguable probable cause to arrest plaintiff and plaintiff had presented no evidence that defendant officer was responsible for inmates being promptly arraigned).

End Footnotes- - - - - - - - - - - - - - - - - -

On the issue of excessive force, Rodriguez has highlighted evidence tending to show that after Sgt. Farrell grabbed Plaintiff's arm and commenced the handcuffing, Plaintiff told Sgt. Farrell, during the handcuffing, to be careful because Plaintiff's arm was injured. n2 And, Rodriguez [*1278] stresses that, even if the initial handcuffing[**4] was not excessive, his continued handcuffing was excessive.

Footnotes- - - - - - - - - - - - - - - - - - - -

n2 In his deposition, Plaintiff testified that he screamed in pain and screamed that his arm was hurting when Sgt. Farrell applied the pain compliance handcuffing technique described in our original opinion. Also in that deposition, Plaintiff unequivocally states that, even after the handcuffing began: "I didn't even tell him then [that my arm was specifically injured], I was just telling him that he was hurting my arm." In contrast, Sgt. Farrell testified in his deposition that he simply handcuffed Plaintiff behind his back: he denies applying any pain compliance handcuffing technique when arresting Plaintiff or that Plaintiff screamed, in pain or otherwise. But, Sgt. Farrell does note that Plaintiff did ask him to be careful after Farrell started the handcuffing because his (Plaintiff's) arm was injured. We take the best set of facts for Plaintiff.

End Footnotes- - - - - - - - - - - - - - - - - - -

As we noted in our original opinion, a police officer need not credit everything a suspect tells him. [**5] See *Marx v. Gumbinner, 905 F.2d 1503, 1507 n.6 (11th Cir. 1990).* This idea is especially true when the officer is in the process of handcuffing a suspect. As another federal court recently noted, statements by suspects claiming (at the time of their arrest) to have pre-existing injuries are, "no doubt, uttered by many suspects who, if given

the choice, would prefer not to be handcuffed at all and, if they must be restrained in that manner, would prefer that the handcuffs be in front." *Caron v. Hester , 2001 U.S. Dist. LEXIS 19382, 2001 WL 1568761,* at *8 (2001) (granting officer, who handcuffed suspect behind suspect's back, qualified immunity on excessive force claim despite officer's alleged knowledge -- based upon suspect's testimony that he told the officer -- of suspect's pre-existing injury when "[the officer] was not confronted with any objective manifestation of [the suspect's] claimed shoulder problem"). In the context of this case -- a case in which Sgt. Farrell, after midnight on the side of the road, reasonably believed that Plaintiff (who, as we discussed in our original opinion, had no obvious signs of injury specifically to his[**6] arm) was a fugitive who had evaded capture, Sgt. Farrell's alleged discounting of Plaintiff's arm-injury claim (a claim not made until after Sgt. Farrell began to arrest Plaintiff despite the fact that he had been in Sgt. Farrell's company for roughly 30 minutes when the handcuffing began) was reasonable. n3 Cf. *Jackson v. City of Bremerton, 268 F.3d 646, 652 (9th Cir. 2001)* (in arrest for failing to disperse, pushing suspect to the ground and kneeling on her back not excessive force despite fact that suspect informed officer of her pre-existing back and shoulder injuries); *Morreale v. City of Cripple Creek 1997 U.S. App. LEXIS 12229, 1997 WL 290976,* at *1, 5-6 (1997) (in arrest for driving with a suspended license, milder handcuffing of suspect behind her back not excessive force despite suspect's request that she be handcuffed

in front to avoid aggravating pre-existing shoulder injury).

Footnotes- - - - - - - - - - - - - - - - - - -

n3 Sgt. Farrell did see that Plaintiff had medical records and prescription drugs with him. And, before the arrest began, Plaintiff claims that he told Sgt. Farrell that Plaintiff had recently been released from a hospital after a motorcycle accident.

Perhaps, if Plaintiff, before the physical part of the arrest began, had also told Sgt. Farrell that Plaintiff's arm was injured, we would be more inclined to conclude that the Constitution required Sgt. Farrell to credit that statement. But, that is not what occurred here.

End Footnotes- - - - - - - - - - - - - - - - - -

That Plaintiff's handcuffs were not removed until about fifteen minutes after his initial handcuffing does not transform what is otherwise a meritless handcuffing-based excessive-force claim into a valid continued handcuffing-based excessive-force claim. See *Morreale, 1997 U.S. App. LEXIS 12229, 1997 WL 290976,* at *1 (plaintiff was handcuffed for twenty minutes while transported to station, during which time plaintiff complained of wrist pain from handcuffing: not excessive force). Plaintiff admits that [*1279] he -- even after the handcuffing -- never asked Sgt. Farrell to handcuff him in front of his body, instead of behind his back.

Nor did Plaintiff ask Sgt. Farrell to remove the handcuffs altogether. And, Plaintiff admits that he never asked Sgt. Farrell for medical assistance. n4 Furthermore, there is no evidence of delay for delay's sake during the time Plaintiff was kept handcuffed.

Footnotes- - - - - - - - - - - - - - - - - - -

n4 Plaintiff did testify that he moaned or grunted in pain while in transport to the police station and that, once at the station, told Sgt. Farrell that he was in pain. And, evidence tends to show that Plaintiff asked that his medications be brought with him from the scene of the arrest.

End Footnotes- - - - - - - - - - - - - - - - - -

Plaintiff's petition for rehearing is DENIED. And, no judge of the Court having requested a poll, Plaintiff's suggestion for rehearing en banc is DENIED.

Fourth Amendment to United States Constitution:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

42 U.S.C. 1983, United States Code:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

28 U.S.C. 1441. United States Code:

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

28 U.S.C. 1254, United States Code:

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

Winter Park Police Department Procedures:

106-12 Handcuffing

Purpose: to establish procedures for the proper use of handcuffs in restraining prisoners and protecting members of the department.

Procedure: Upon making an arrest, taking a person into custody, or transporting under the Baker or

Member:

1. Search prisoner for weapons, contraband, or evidence

2. Before transporting, all prisoners will be handcuffed behind their backs with the seat belt latched unless there are specific, articulable reasons for other actions. There may be some instances where it may be appropriate to handcuff a prisoner in front of his body or not to handcuff at all. However, these instances are rare and such action should be justified by each officer, ie: very young, old, or disabled persons.

3. Handcuff any person in your custody who exhibits violence or may injure themselves (Baker and Meyers Act)

4. May use leg manacles on individuals charged with serious crimes who are strong escape risk, or who are extremely violent.

Note:

it is our responsibility to see that prisoners in our custody receive necessary medical treatment; therefore, members shall not interfere with the necessary tasks to be performed by medical personnel. However, it is the responsibility of the Department to ensure a prisoner does not escape.